

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**BNSF RAILWAY COMPANY,
A Nebraska Corporation,**

Plaintiff,

VS.

RICHARD L. SCOTT,

Defendant,

**LFP ENTERPRISE, INC.,
A Nebraska Corporation and,**

**Defendant and
Third Party Plaintiff,**

VS.

**BENDIX COMMERCIAL VEHICLE
and VOLVO GROUP,**

Third Party Defendants.

4:05CV3034

ORDER

This matter is before the court on the motion of the defendants and third party defendants for modification of the final progression order (Filing No. 89). The plaintiff opposes the motion and seeks to have it stricken (Filing No. 90). The plaintiff filed a brief (Filing No. 91) and index of evidence (Filing No. 92) in support of its motion. The defendants and third party defendants seek to extend the summary judgment deadline by sixty days, from December 19, 2005, until February 21, 2006. The defendants and third party defendants assert inadequate discovery has been completed to allow the parties to file (or respond to) motions for summary judgment. The plaintiff states the moving parties did not confer prior to filing the motion for extension of deadlines. Additionally, the plaintiff provides evidence the plaintiff cooperated with discovery and disclosure requirements enabling the moving parties to complete appropriate discovery in a timely fashion. Accordingly, the court finds the moving

parties failed to provide good cause for the inadequate discovery and lengthy extension of time. **See** Fed. R. Civ. P. 16(b); **Bradford v. DANA Corp.**, 249 F.3d 807, 809-10 (8th Cir. 2001); **see also Thorn v. Blue Cross & Blue Shield of Fla., Inc.**, 192 F.R.D. 308, 309 (M.D. Fla. 2000) ("In demonstrating good cause, the moving party must establish that the 'scheduling deadlines cannot be met despite a party's diligent efforts.'") (**paraphrasing** Fed. R. Civ. P. 16 advisory committee notes (1983 amendment)). Upon consideration,

IT IS ORDERED:

1. The defendants and third party defendants' Motion for Modification of the Final Progression Order (Filing No. 89) is denied.

2. The plaintiff's Motion to Strike (Filing No. 90) is granted to the extent that the motion (Filing No. 89) is denied.

DATED this 28th day of November, 2005.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge